IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1291 OF 2005

Dilip Madhavrao Vyavhare ...Applicant

Versus

Shobha Ramesh Ubale & Ors ...Respondents

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Mr. S.V. Kotwal, Advocate for Applicant.

Mr. Uday Warunjikar, Advocate for Respondent No.1

Mr. D.P. Adsule, Adv. for Respondent Nos. 2 and 3.

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 8TH AUGUST, 2005

P. C.:-

1. Heard both sides.

2. The applicant has prayed for quashing of process issued against him in R.C.C. No. 119/2004 which is pending in the Court of learned J.M.F.C. Manmad. In the said case, process has been issued against the applicant under Sections 417 and 380 r.w. 34 of I.P.C.

3. The applicant had preferred an application for recalling of process before the learned Magistrate. The said application came to be rejected by the

learned Magistrate in view of the observations of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274.** In view of the observations of the Supreme Court in the case of Adalat Prasad (supra), no fault can be found with the order of the Magistrate, hence, I am not inclined to interfere with the said order. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process against the applicant and not in respect of the order of the Magistrate rejecting the application for recalling of process.

6. Office to issue an authenticated copy of this order to the parties.

7. Application is disposed of.

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